S.B.Civil Review Petition No.82/1995

Abdul Wahid.

vs.

Yusuf and another.

Date : 15.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SC Maloo, for the petitioner.
Mr.J Chopra, for the respondents.

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Heard learned counsel for the parties.

The petitioner has filed the present review petition for reviewing the judgment of this Court dated 24.11.1994.

Learned counsel for the petitioner submitted that due to death in his relation on 24.11.1994, he was not in position to attend the Court on 24.11.1994. This information was given to learned counsel for the respondents (learned counsel for the petitioners in the revision petition no.551/1992) on telephone. According to learned counsel for the petitioner, said information was not given to the court and the revision petition

was argued. Learned counsel for the review petitioner submits that the revision petition itself was not maintainable because of the reason that the trial court dismissed the suit of the plaintiff in view of the decision given on issue no.11 framed by the trial court, therefore, the judgment of the trial court impugned in the revision petition was appealable and, therefore, the revision petition was not maintainable.

Learned counsel for the review petitioner also pointed out that in fact, total wrong facts were submitted before the High Court while arguing the revision petition no.551/1992. It is also stated that the petitioner submitted an application for impleading the daughters of one of the partners as party in the suit and that was dismissed after holding that they were not necessary parties.

Learned counsel for the review petitioner pointed out that no such application was submitted by the plaintiff/petitioner before the trial court in the suit but in fact, the application for impleading daughters of one of the partners was submitted by one of the defendant wherein the trial court held that the daughters were necessary parties and they have not been impleaded and more than 12 years have passed and the period of limitation for filing the suit against those daughters already expired and, therefore, following the judgment of Hon'ble Supreme Court, dismissed the

application filed under Order 1 Rule 10 CPC and that too after holding that the daughters were necessary parties in the suit.

In addition to above, according to learned counsel for the review petitioner, it was wrongly contended before this Court that none of the parties argued on the question of maintainability of the suit in the present form whereas in the impugned order itself, it is clearly mentioned that all the parties argued on the question of maintainability of the suit. Not only this, the petitioner when submitted that no argument was advanced by counsel for the petitioner before the trial court on the issue of maintainability of the suit, the said review petition was dismissed on 8.9.1994 wherein the trial court again held that the counsel argued on the issue of maintainability of the suit. That fact was not brought to the notice of this Court on 24.11.1994. It is also submitted that the suit for mere rendition of accounts without seeking dissolution of partnership was not maintainable.

According to learned counsel for the review petitioner, all these facts were not brought to the notice of this Court as learned counsel for the review petitioner was not in a position to attend the Court due to death in his relation on the same day when the revision petition was heard. Therefore, the order of this Court dated 24.11.1994 deserves to be set aside

and the revision petition may be heard afresh.

Learned counsel for the respondent submitted that the trial court was directed to decide four issues out of which the trial court held that three issues were issues of facts and cannot be decided as preliminary issue. It is submitted that the trial court decided the issue no.11 but wrongly dismissed the suit of the plaintiff on the ground of non-joinder of the parties when some of the heirs of the original partner were parties in the suit. It is also submitted that even if the suit as it was framed was not maintainable, then the plaintiff could have been permitted to amend the suit to include appropriate relief in the facts and circumstances of the case. It is also submitted that the plaintiff could have been permitted to implead the party in the suit instead of dismissing the suit.

So far as maintainability of the revision petition is concerned, learned counsel for the respondent submitted that when the suit is decided by the court on the basis of decision given on a preliminary issue, revision petition can be preferred.

I considered the submissions of learned counsel for the parties.

It appears from the facts of the case that learned

counsel for the review petitioner was prevented because of sufficient cause and, therefore, he could not appear before the Court on 24.11.1994 and it appears from the impugned order that some of the facts are contrary to the facts mentioned in the impugned order of the trial court which was impugned in the revision petition no.551/1992, therefore, the review petition deserves to be allowed only on the ground that no reasonable opportunity of hearing was given to the petitioner.

In view of the above, this review petition is allowed, the order of this Court dated 24.11.1994 is set aside and SB Civil Revision Petition No.551/1992 is restored to its original number.

Since the parties are represented by their learned counsels, therefore, revision petition no.551/1992 itself will be heard on 22.5.2007.

(PRAKASH TATIA), J.

S.Phophaliya